

## CHAPTER TWO: CONSTITUTIONAL LIMITATIONS

### INTRODUCTION

New York State has its own Constitution. Like the United States Constitution, it has a Bill of Rights which provides basic guarantees for all individuals. The New York Constitution does not codify the same rights as the Federal Constitution, but New York is nevertheless required to uphold the same rights guaranteed to everyone by the United States Constitution. This chapter provides only the briefest overview of some of the rights an individual has when charged with a crime or when he is otherwise affected by the criminal justice system in New York. This chapter will discuss *ex post facto*, equal protection, and freedom of speech with corresponding cases to illustrate how these concepts are applied in New York. Other protections that New York provides, which the reader may want to explore, are double jeopardy, trial by jury, the prohibition against excessive bail, the right to peaceful assembly, etc. Most fundamentally, the New York State Constitution provides that “no person shall be deprived of life, liberty, or property without due process of law.”

### RESOURCES

The rights discussed in this chapter are each found in the Bill of Rights (Article I) of the New York State Constitution. The full-text New York State Constitution can be found at the following website <http://www.dos.state.ny.us/info/pdfs/cons2004.pdf> which is supported by the New York State Department of State.

### *EX POST FACTO*

*Ex post facto* is not explicitly defined in the New York Constitution. Trial judges in New York, however, have been faced with *ex post facto* concerns. Issues of *ex post facto* may arise when the New York Legislature amends, creates, or removes a statute. The concurring opinion in *People v. Hudy*, a case that will be discussed shortly, provides the rationale and application of the *ex post facto* clause in the United States Constitution. The clause exists to serve three purposes. First, the clause is intended to curb arbitrary and oppressive abuses by the government. In other words, the government cannot change the law and apply the current law against a defendant who committed the proscribed act before the law was changed, especially when the change presents a disadvantage to the defendant. Second, the clause ensures that the law gives fair warning regarding the behavior that’s prohibited and the punishment attached to violating the law. Third, the clause upholds the separation of powers by “confining the legislature to penal decisions...and the judiciary and executive to applications of existing penal law.” Neither judges, the police, nor prosecutors may arbitrarily interpret or enforce a law against behavior that is not codified by the legislature.

Previous federal case law has described four types of laws as being *ex post facto*.<sup>1</sup> The first type, with perhaps the widest application, are those laws that make an action done before the passing of the law criminal and punish accordingly. Second are those laws that aggravate a crime, i.e., make it more serious, than when it was committed. Third are laws that change or increase the punishment for a crime committed when the punishment was less or different. And fourth are those laws that alter legal rules of

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evidence. The fourth type of *ex post facto* law is the focus of the case discussed next. The issue in this case concerns whether amended statutes of the New York Penal Law §§130.16 (Corroboration of sex offenses) and 260.11 (Endangering the welfare of a child)) which today do not require corroboration of evidence when the incapacity to consent results from the victim's young age should have been applied to defendant's case. At the time defendant committed his alleged offenses, neither statute had yet been amended. Prior to the amendment, both statutes required that, where a victim lacked the capacity to consent to sex, the testimony of the victim was required to be corroborated by evidence of an attempt to engage in sexual contact at the time of the alleged occurrence and evidence that connected the defendant with the attempted or commission of the offense.

In *People v. Hudy*, defendant was a remedial math teacher at an elementary school in Broome County. Official concern about his classroom conduct came to light when the younger brother of one of the defendant's former pupils told his mother that he had heard about a teacher who puts his hands down boys' pants. This information reached the ears of the principal. The police were then contacted and launched an investigation. At trial, each of the nine boys who had been interviewed by the police testified to essentially the same story that defendant, while ostensibly helping him with a math problem, would fondle the boy as he stood behind defendant's desk. Defendant argued that the boys had falsely accused him and that the story had snowballed throughout the school. Additionally, defendant argued that the prosecution was permitted to call an additional witness, a boy who had moved out of the state more than a year prior to the investigation. His grandmother was also permitted to testify about statements the boy made to her. Finally, defendant complained that he was not permitted to call the two investigators who had initially interviewed the boys. Their testimony could potentially have supported defendant's contention that one of the boys had first denied any improper touching but later changed his mind after one of the investigators told him that the police had two witnesses who had seen such touching occur.

Defendant was convicted of 16 counts of first degree sexual abuse and nine counts of endangering the welfare of a child, all involving children under age 11. The Appellate Division affirmed the conviction by holding that the present law did not require corroboration of the underage victims' testimony and that the *ex post facto* clause did not preclude application of the law as it presently stands to the charges involving crimes that had been committed before the law's enactment.

The Court of Appeals, however, reversed the convictions. According to the court, "the critical elements necessary to establishing that a...penal law is *ex post facto* are its retrospectivity and its detrimental effect on the accused." The court found that there was no claim that the legislative decision to repeal the corroboration rule applicable to defendant's case was arbitrary, vindictive, or oppressive or intended to single out defendant for particularly unfavorable treatment. Thus, the court found that the *Ex Post Facto* Clause of the United States Constitution had no application here and that defendant was properly convicted. According to the court, "The *Ex Post Facto* Clause of the United States Constitution does not require that a defendant be tried under the corroboration rules that existed at the time of his alleged crimes were committed...[So] the amended versions of Penal Law §§ 130.16 and 260.11 were properly applied at defendant's trial, and the evidence was legally sufficient to support the jury's verdicts, notwithstanding that most of the charges were supported by corroborative proof." But the court "nonetheless [held] that because the trial court's erroneous evidentiary rulings were highly [detrimental to defendant], the conviction that was based on those verdicts cannot be permitted to stand."

The order of the Appellate Division was reversed and a new trial ordered.<sup>2</sup>

## EQUAL PROTECTION

**Section 11 of Article I** of the New York Constitution contains the equal protection clause and states:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

Equal protection issues permeate all areas of law, such as laws regulating same sex marriage, landlord-tenant matters, health insurance benefits, access to public places, and local government procedures. In the criminal law, plaintiffs have brought legal actions against governmental entities in cases ranging from violations to felonies.

In *Schnapp, et al. v. Lefkowitz, et al.*, the plaintiffs argued that the law requiring all dog owners in cities with a population in excess of 400,000 to pick up after their pets in public places (§1310 of the Public Health Law) denied plaintiffs equal protection of the laws. The law makes it a violation punishable by not more than \$100. The lawsuit asked that the law be declared unconstitutional since it places such great burdens on dog ownership that it makes it virtually impossible for city dwellers to continue to own dogs. The New York Supreme Court resoundingly disagreed and declared the lawsuit “frivolous.” According to the court, “It is elementary that a statute designed to foster the safety, health, and welfare of the people of the State is a reasonable and proper exercise of the police power... We all recognize that the city is different from the country, and that the intense concentration of population in the city makes it necessary to prohibit, limit, or regulate certain practices which could be tolerated in the countryside... The fact that the law applies only to cities with a population in excess of 400,000 (i.e., New York and Buffalo) hardly constitutes a denial of the equal protection of the laws to the residents of those cities. Density of population creates distinct and unique problems.” The court declared the statute to be constitutional and dismissed the complaint.<sup>3</sup>

In another case, defendant was ticketed for speeding in violation of the Vehicle and Traffic Law. The prosecutor in the case had previously dismissed several others because the speed limit sign was partially hidden by foliage. However, in this case, the prosecutor reasoned that he decided to prosecute this case because “he was entitled to change his mind.” The Village Court dismissed the case in part for violation of equal protection. The court reasoned that “it is both arbitrary and capricious for the prosecutor to not afford this defendant the same treatment that he extended to several other defendants in similar circumstances... [and] that it would be a gross violation of the 14<sup>th</sup> Amendment of the United States Constitution and article I, §11 of the New York State Constitution to not afford this defendant the ‘equal protection of the laws.’” The court in this case found no “extenuating circumstances” to treat this case differently.<sup>4</sup>

In New York, certain sex offenses were written, even in the revised Penal Law, to be applied only to instances where a male perpetrated a crime against a female victim. The idea behind this was to protect the chastity of women and prevent unwanted pregnancies. Thus, female perpetrators were exempt from the law as well as male victims. However, in 1984, the Court of Appeals of New York ruled in *People v. Liberta* that the rape and sodomy statutes both violate equal protection because they are underinclusive

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classifications which burden males who victimize females, but not female victimizers or males who victimize males. The court found that this statute no longer achieves an important governmental objective.<sup>5</sup> In *People v. Dieudonne, Dieudonne, Bernagene and Strackman*, the Supreme Court relied upon *Liberta* to find the sexual misconduct statutes also violate equal protection, again since no important governmental objective was demonstrated by the prosecution.<sup>6</sup>

The following case was appealed to the United States Supreme Court. The decision in this case had wide-ranging implications not only for New York but also for the United States regarding assisted suicide. In this case, the Supreme Court considered the balance of refusing medical treatment against the intentional aiding of another person to commit suicide.

VACCO, ET AL. V. QUILL, ET AL.  
95-1858  
Supreme Court of the United States (1995)

Opinion By: Rehnquist, C.J.

The issue presented in this case is whether New York's prohibition on assisting a suicide violates the Equal Protection Clause of the 14<sup>th</sup> Amendment.

New York State law states that (1) certain criminal statutes provide that a person who intentionally causes or aids another person to attempt or commit suicide is guilty of a felony; but (2) under other statutes, a competent person could refuse lifesaving medical treatment.

This action was brought in 1994 against the State's Attorney General before the United States District Court in Southern New York by plaintiffs who were, among others, three physicians who practiced in New York. The plaintiffs asserted that the prohibition on assisted suicide statutes violated the equal protection clause of the Federal Constitution's Fourteenth Amendment as applied to physicians who assisted mentally competent but terminally ill adults who chose to hasten death. The district court, however, recognized that New York's assisted-suicide statutes have been in existence since 1965, when the Penal Law was revised. Since then, New York has continually recognized the line between "killing" and "letting die." The district court granted judgment in favor of the New York Attorney General and dismissed the suit by ruling that New York could recognize a difference between allowing nature to take its course and intentionally using an artificial death-producing device.

The plaintiffs appealed to the United States Court of Appeals for the Second Circuit which reversed the order of the District Court. The Court of Appeals expressed the view that (1) the ending of life by the withdrawal of life-support systems was nothing more nor less than assisted suicide; and (2) to the extent that the criminal statutes prohibited a physician from prescribing medications to be self-administered by a mentally competent, terminally ill person in the final stages of terminal illness, such statutes were not rationally related to any legitimate state interest and violated the Equal Protection Clause.

The United States Supreme Court granted certiorari and reversed the Court of Appeals. The Court held that the New York criminal statutes did not violate the equal protection clause because (1) the criminal statutes did not infringe fundamental rights; (2) on their faces, neither the statutes banning assisted suicide nor the statutes permitting the refusal of medical treatment treated anyone differently than anyone else or drew on any distinctions between persons; (3) the distinction between assisting suicide and

refusing lifesaving medical treatment was important, logical, and rational; and (4) New York's reasons for recognizing and acting on the distinction between assisting suicide and refusing lifesaving medical treatment were valid and important public interests.

If a legislative classification or distinction 'neither burdens a fundamental right nor targets a suspect class, we will uphold [it] so long as it bears a rational relation to some legitimate end' ...New York's statutes outlawing assisting suicide affect and address matters of profound significance to all New Yorkers alike. Under the current law, "[e]veryone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment; *no one* is permitted to assist a suicide. Generally speaking, laws that apply evenhandedly to all 'unquestionably comply' with the Equal Protection Clause [of the United States]."

The Court further argued, "The distinction [between refusing medical treatment and assisted suicide] comports with fundamental legal principles of causation and intent. First, when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication...Furthermore, a physician who withdraws, or honors, a patient's refusal to begin life-sustaining medical treatment purposefully intends, or may so intend, only to respect his patient's wishes and 'to cease doing useless and futile or degrading things to the patient when [the patient] no longer stands to benefit from them'...A doctor who assists a suicide, however, 'must, necessarily and indubitably, intend primarily that the patient be made dead.' Similarly, a patient who commits suicide with a doctor's aid necessarily has the specific intent to end his or her own life, while a patient who refuses or discontinues treatment might not."

New York State criminal statutes providing that a person who intentionally causes another's attempt or commission of suicide is guilty of a felony, does not violate the 14<sup>th</sup> Amendment's equal protection clause.

The judgment of the Court of Appeals was reversed.

## **FREEDOM OF SPEECH**

**Section 8 of Article I** contains the freedom of speech clause which states:

Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

A case in which the public's right to attend a criminal court proceeding was considered against a court's right to protect a defendant against prejudice occurred in *In the Matter of Poughkeepsie Newspapers, Inc. v. Rosenblatt, et al.* In this case, defendant Lemuel Smith strangled and sexually molested a correction officer who had been on the job for about a month. The insidious nature of the crime made it a high profile case in the media.

In this case, the petitioner, Poughkeepsie Newspapers, Inc., challenged an order of the respondent, Justice Rosenblatt, that excluded the public from a hearing conducted to determine the admissibility of certain evidence in the trial of defendant Lemuel Smith. The issues raised required the Supreme Court of New York to strike a balance between the First Amendment's guarantee of freedom of the press as it pertains to public access to criminal proceedings and a defendant's right to a fair trial.

Defendant was on trial for murder in the first degree. In the highly publicized mutilation slaying of Correction Officer Donna Payant at the Green Haven Prison, the respondent Justice, who was presiding

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at the trial, granted the application for a hearing and ordered that the public be excluded. The court took this case because of the importance of the question involved, the possibility of recurrence, and the fact that orders of this nature quickly expire and thus evade review. “Accordingly, we address the merits of the petitioner’s contention that the public was improperly excluded from the hearing at bar.”

According to the court, “It is now firmly established that the press and the general public have a constitutional right of access to criminal trials founded upon the guarantees of the First Amendment. Nevertheless, ‘although the right of access to criminal trials is of constitutional stature, it is not absolute. But the circumstances under which the press and public can be barred from a criminal trial are limited; the State’s justification in denying access must be a weighty one...[I]t must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest,’”

In this case, the justice did not exclude the public from the trial, but only a hearing to determine the admissibility of certain evidence. Further, “In view of the intensive publicity surrounding the trial, press access to the hearing would undoubtedly raise a significant danger that information concerning the substance of the challenged evidence will reach sitting jurors...That danger would require additional interrogation of the jurors, needlessly and significantly prolonging this already lengthy trial and...causing additional prejudice...The evidence proffered by the prosecution was extremely damaging to the defendant...Weighing these circumstances against the legitimate rights of the press...we hold that the respondent Justice properly closed the hearing to the public pending a determination of the admissibility of the challenged evidence.”

### REVIEW QUESTIONS

1. If a right, recognized in the U.S. Constitution, is not explicitly recognized in the New York State Constitution, the New York courts:
  - A. can ignore that right.
  - B. must nevertheless recognize the right
  - C. must write the right in the State Constitution
  - D. must let the defendant know about the right.
2. One reason behind imposing constitutional limits on the law is to:
  - A. create needless difficulties for the government.
  - B. provide challenges to the government so that only the most capable can interpret the law.
  - C. prevent arbitrary and capricious application of the law.
  - D. encourage lawyers to get jobs in corporate law firms.
3. New York State prohibits people who assist suicides but allows competent but terminally ill patients to:
  - A. render them unconscious.
  - B. refuse medication.
  - C. kill them.
  - D. take medical marijuana.

4. Which of the following is **not** an example of an *ex post facto* law?
- A. an offender sentenced to a prison term that's twice as long as the term was when the offense was committed
  - B. an offender who is charged with an offense that did not exist as an offense at the time of his act
  - C. an offender who is charged with an aggravated offense which had not aggravating factor at the time of the act
  - D. an offender who is convicted of an offense that was an offense at the time he committed the act
5. Under which of the following conditions may a judge preclude the presence of the press in a court proceeding?
- A. never
  - B. when she wants it
  - C. when it would be highly detrimental to a defendant's right to a fair trial
  - D. when the prosecutor requests it

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## REFERENCES

<sup>1</sup> Calder v. Bull (3 U.S. 386 (1798))

<sup>2</sup> 73 N.Y. 2d 40 (1988)

<sup>3</sup> 422 N.Y.S. 798 (1979)

<sup>4</sup> People v. Fox (596 N.Y.S. 2d 984 (1993))

<sup>5</sup> 64 N.Y. 2d 152 (1984). This case will be discussed in greater detail in Chapter Ten.

<sup>6</sup> 544 N.Y.S. 2d 704 (1989)

## ANSWERS

1. B; 2. C; 3. B; 4. D; 5. C